UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/58/Add.11
18 March 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[15 March 1991]

THIRD PERIODIC REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: SUPPLEMENTARY REPORT ON THE DEPENDENT TERRITORIES, PART III, SECTION F: HONG KONG: AN UPDATE

Introduction

1. The supplementary report of the United Kingdom on its dependent Territories covers the period up to October 1989. It does not include recent important developments that concern the International Covenant on Civil and Political Rights (the Covenant) as it is applied to Hong Kong including the introduction into the legislature of a Bill of Rights. The supplementary report was also written before the promulgation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law").

2. Part I(A) of the present report sets out some general information relating to these developments and deals with some of the factors that have had a special bearing on the form and content of the Hong Kong Bill of Rights Bill ("the Bill of Rights"). Part I(B) describes in detail the Bill of Rights Bill 1990. Part II outlines recent legislative, administrative and other developments concerning the provisions of individual articles of the Covenant.

---

* The present document contains additional information submitted by the Government of the United Kingdom relating to Hong Kong.

READEX
FICHE

Part I(A)

3. Paragraphs 1-9 of section F in part III of the supplementary report on the dependent Territories (CCPR/C/58/Add.6) describe the existing safeguards for protecting human rights in Hong Kong and the arrangements under the Joint Declaration for the protection of human rights after 1997. These include a description of the provision in the Sino-British Joint Declaration, which says that the provisions of the Covenant as applied to Hong Kong shall remain in force after 1997. These paragraphs also describe the provisions in the then draft Basic Law which relate to the Covenant. Paragraphs 10-12 provide the background on the preparation of a bill of rights in Hong Kong.

The Basic Law

4. The Basic Law was adopted by the Seventh National People's Congress of the People's Republic of China at its third session on 4 April 1990 and was promulgated under Decree No. 26 by the President of the People's Republic of China on the same day. It will come into effect on 1 July 1997. The Basic Law will be the primary constitutional document for Hong Kong, which will become on 1 July 1997 a Special Administrative Region of the People's Republic of China. Chapter III ("Fundamental rights and duties of the residents") of the Basic Law is the principal domestic safeguard for the protection of human rights for the residents of Hong Kong after 1997. It consists of 19 articles, which guarantee a variety of civil, political, economic, social and cultural rights. Article 39 provides that:

> "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article."

5. This article reflects the provision in the Sino-British Joint Declaration that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall continue in force after 1 July 1997.

The Hong Kong Bill of Rights Bill

6. Following the announcement by the Governor of Hong Kong in October 1989 that a bill of rights would be introduced into the Legislative Council by July 1990, the Hong Kong Administration published in March 1990 a draft of the Bill of Rights Bill for public consultation in a publication entitled "Commentary on the draft Hong Kong Bill of Rights ordinance". The text of this publication was in English and Chinese. Over 19,000 copies were distributed.

7. The draft Bill was in the form of an ordinance which makes justiciable the right and freedoms contained in the International Covenant on Civil and Political Rights as applied to Hong Kong.

8. The publication of the draft Bill stimulated public discussion on the issue of implementation of the Covenant in Hong Kong. Over 800 submissions on the form and content of the draft Bill were received by the Secretary for Constitutional Affairs by the closing date for submissions on 6 June 1990. Nearly all of the submissions supported the principle of a Bill of Rights for Hong Kong and the direct incorporation by one instrument into the legal system of the relevant provisions of the Covenant.

9. As a result of the submissions, the text of the draft Bill of Rights was amended in several aspects. On 25 July 1990 the Chief Secretary introduced the Hong Kong Bill of Rights Bill 1990 into the Legislative Council. The Chief Secretary announced on the same occasion that it was the intention of the Hong Kong Administration to seek an amendment to Hong Kong's primary constitutional document, the Letters Patent, so as to ensure that no future legislature that derived its competence from the Letters Patent could validly enact any law that was inconsistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.

Part I(B). Further information on the form and content of the Bill of Rights

The Bill of Rights Bill

10. The Hong Kong Bill of Rights Bill reproduces the text of the International Covenant on Civil and Political Rights as applied to Hong Kong, save for minor adaptations to the text to make local sense. The text is in English and Chinese. The following sections are intended to give a general description of the form and content of the Bill of Rights as introduced to the Hong Kong Legislative Council on 25 July 1990. The Bill is being closely studied by the Legislative Council and further changes may be made during the rest of its passage through the legislature.

(i) Part I. Preliminary

11. Part I of the Bill of Rights Bill is entitled "Preliminary" and contains provisions relating to the commencement, interpretation, scope of application, effect, remedies and jurisdiction of the courts, and the conditions under which derogation from the rights guaranteed in the Bill of Rights is permitted.

12. The interpretation clause provides, inter alia, that nothing in the ordinance shall be interpreted as implying any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in it; nor can there be any restrictions or derogations from existing human rights on the pretext that the Bill of Rights does not recognize them or that it recognizes them to a lesser extent (article 5, International Covenant on Civil and Political Rights).

13. Any parts of the common law and any pre-existing legislation that cannot be construed in a way that is consistent with the International Covenant on Civil and Political Rights as reflected in the Bill of Rights will be repealed by the Bill of Rights. If the Bill is enacted as presently drafted, future legislation will be interpreted, if it is possible to do so, in a way that is consistent with the Bill of Rights.

14. In time of public emergency that threatens the life of the nation and that has been officially proclaimed, measures can be taken that derogate from the Bill of Rights. But such measures must be such as are strictly required by the exigencies of the situation and must not be inconsistent with other obligations under international law that apply to Hong Kong, must not discriminate on grounds of race, colour, sex, language, religion or social origin and must not derogate from other specified rights (article 4, International Covenant on Civil and Political Rights).

15. Courts and tribunals in Hong Kong are vested with a broad discretionary power to grant such remedy or other relief as is within the court's or tribunals' jurisdiction in respect of a violation or threatened violation of the Bill of Rights and as seems appropriate and just in the circumstances of the particular case.

16. Clause 7 provides that except in relation to matters arising under article 14 of the Bill of Rights (privacy) (see para. 17 below), the Bill of Rights will, if enacted as presently drafted, bind the Government of Hong Kong and all authorities and all persons whether acting in a public or private capacity.

17. In the light of public comments received during the public consultation process, the Hong Kong Administration has accepted that the right to privacy should primarily be provided for by way of detailed legislation that would more precisely define the content of the right and thus provide for greater certainty in commercial conduct. Given that the Law Reform Commission is already well advanced with its comprehensive study of the subject (see paras. 64-68 below), the Hong Kong Government has decided that article 14 should not be binding on private persons for the time being.

(ii) Part II. The Hong Kong Bill of Rights

18. Part II of the Hong Kong Bill of Rights Bill is entitled "The Hong Kong Bill of Rights". It is closely based on the International Covenant on Civil and Political Rights as applied to Hong Kong, and takes into account some of the existing reservations and declarations of the United Kingdom and the fact that Hong Kong does not have the status of a State party to the Covenant and is not a sovereign State.

(iii) Part III. Exceptions and savings

19. Part III of the Hong Kong Bill of Rights Bill is entitled "Exceptions and savings". Clauses 9-13 reflect the reservations and declarations that the United Kingdom entered specifically in respect of Hong Kong or that otherwise apply to Hong Kong. The rights and freedoms guaranteed under part II of the Bill are subject to these provisions.

20. Clause 14 has the effect of saving from automatic repeal by the Bill pre-existing legislation for a period of at least one year. It also provides that the Bill of Rights does not affect any act done under pre-existing legislation during that period. The purpose of this clause is to give the Government some time to review further existing laws, particularly those that were enacted before the

International Covenant on Civil and Political Rights was applied to Hong Kong, to ensure their compatibility with the Bill of Rights and, therefore, the International Covenant on Civil and Political Rights.

Part II. Other relevant developments relating to articles in parts I, II and III of the Covenant

21. The following paragraphs outline recent legislative, administrative and other developments concerning the provisions of individual articles since October 1989. Where there have been no new developments, no reference is made to the article in question.

Article 2

22. In preparation for the enactment of the Bill of Rights, a review of current legislation is being conducted to identify any inconsistencies with the Bill of Rights (and thus with the Covenant as applied to Hong Kong).

23. The Law Reform Commission has completed reviews of existing legislation in a number of areas that have a bearing on human rights issues, including loitering, laws governing homosexual conduct and bail. The Commission is currently examining laws relating to police powers of arrest and detention, search and seizure, illegitimacy and protection of privacy. Further details of these reviews and of the Government's response to the reports of the Commission are provided under the articles to which the various references relate.

Publicity and education

24. The Hong Kong section of the third periodic report (see CCPR/C/58/Add.6, part III.F) was tabled in the Hong Kong Legislative Council on 1 November 1989 after its submission to the Committee. Copies of it in both English (500 copies) and Chinese (1,000 copies) were distributed through the Government Information Services and placed in public libraries for the information of members of the public. This supplementary report will be distributed to the public in the same way, as well as being made available to interested non-governmental organizations as soon as it has been submitted to the Committee.

25. Additional copies of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in both English and Chinese were distributed in March 1990 at the same time as the consultative document on the Bill of Rights. The total number of copies of the two Covenants published was 20,000. Most copies were distributed to the public as well as to public libraries and all government departments.

26. The Attorney General's chambers has instituted a training programme for the more than 250 government legal officers. The programme is intended to introduce officers to human rights law (in particular the International Covenant on Civil and Political Rights), the interpretation of human rights treaties that are given effect in domestic law and comparative national and international material. Each officer will be provided with briefing materials, which include a copy of the

International Covenant on Civil and Political Rights and the general comments of the Committee. After the Bill of Rights enters into force, a programme of continuing education will keep officers up to date on developments in Hong Kong and elsewhere, including the jurisprudence of the Committee. Resources permitting, introductory training programmes of this kind will be extended to other areas of the Administration.

27. The Judicial Studies Board is at present endeavouring to make arrangements for a series of lectures to be provided for all professionally qualified judicial officers to familiarize them with the proposed legislation.

28. Other sections of the community are also taking steps to give publicity to the Bill of Rights. The University of Hong Kong held a public seminar on the draft Bill of Rights in 1990, the proceedings of which have been published. It is also taking steps to build up its human rights documentation and to provide a resource to the legal profession in the area of human rights. The University and the Law Society of Hong Kong are organizing a conference on the Bill of Rights to be held in June 1991, which will serve as an introduction to the Bill of Rights for lawyers in Hong Kong.

29. The Law Society and the Bar Association are the two professional associations of lawyers in Hong Kong. They have each established committees to monitor the legislative progress of the Bill of Rights and to promote awareness of human rights issues amongst members.

Article 3

30. (See the third periodic report, CCPR/C/58/Add.6, part III.F, para. 26; see also entry relating to article 26.) The question as to whether the Convention on the Elimination of All Forms of Discrimination against Women should be extended to Hong Kong continues to be under active and careful consideration. The Hong Kong Administration expects to complete its consideration of this question soon after the enactment of the Bill of Rights.

Article 6

31. While the death penalty remains on the statute book, no death sentence has been carried out in Hong Kong since November 1966 (see CCPR/C/58/Add.6, part III.F, paras. 31 and 32). In January 1990, a survey was conducted on 44,000 respondents on, inter alia, their attitude towards the death penalty. The result showed that 50 per cent of the respondents considered that the death penalty should not be abolished, 30 per cent thought that it should and 20 per cent had no opinion.

32. The question was debated in the House of Lords on 29 November 1990. The Earl of Caithness, Minister of State with special responsibility for Hong Kong, reiterated the fact that there had been no executions since 1966 and pointed out that this issue would be resolved within the Territory if and when the time was right, and that for the time being the British Government had no intention of imposing a resolution from outside.

Article 7

33. (See CCPR/C/58/Add.6, part III.F, para. 34.) The United Kingdom Government intends to extend the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to Hong Kong. Once the Bill of Rights is enacted, a draft bill (which has already been prepared) will be introduced into the Legislative Council. This (torture) bill, when enacted, will create an offence of torture and will give effect to the provisions of the Convention, supplementing existing protection under Hong Kong law against torture and other ill-treatment.

34. (See CCPR/C/58/Add.6, part III.F, para. 33.) The review of the use of judicial corporal punishment in Hong Kong has been completed. All legislation that gave the courts power to impose judicial corporal punishment has been repealed with effect from 2 November 1990.

35. The use of corporal punishment in schools is permitted in respect of male pupils, but is restricted by the Education Regulations made under the Education Ordinance. These regulations provide that corporal punishment is permitted subject to certain restrictions. It is a criminal offence for a teacher to administer corporal punishment contrary to the regulations.

36. The Education Commission has recently recommended that corporal punishment in schools in Hong Kong should be abolished. The recommendation is being considered by the Hong Kong Administration.

Article 9

37. The laws and regulations covering powers of arrest and detention in Hong Kong were described in full in the second report (CCPR/C/32/Add.14, annex, sect. F, paras. 25-44).

38. Legislation relating to powers of arrest is currently under review by the Law Reform Commission. A report with recommendations is expected in 1992.

39. The terms of reference for consideration of powers of arrest and detention by the Law Reform Commission consist of examining the existing law and practice governing the powers and duties of the police and other public officers and of private citizens relating to:

(a) Stopping, requesting proof of identity of and searching persons;

(b) Entry, search and seizure;

(c) Arrest and detention;

(d) Questioning and treatment of persons held in police custody;

(e) The release of a suspect on bail by the police and other non-judicial public officers, before charge;

(f) The disposition of seized property.

40. The Commission has also been requested to examine the rights and duties of a person stopped, questioned, detained, searched, arrested, cautioned, interrogated or charged by a police officer, a public officer or a private citizen.

41. In particular, the Commission has been asked to consider whether some or all of the provisions contained in parts I and VI, section 78, and part XI of the Police and Criminal Evidence Act 1984 and the Codes of Practice thereunder should be adopted in Hong Kong, with or without modification (see CCPR/C/58/Add.6, part III.F, paras. 108-110). The Commission has also been requested to produce a draft code relating to these matters.

42. Following its inquiry into the law relating to bail for persons charged with an offence, the Commission recommended that the existing law should be codified, and subject to certain specified conditions, a general right to bail should be created. Although the Commission has not made any recommendations as to the law relating to bail for persons who have not been charged, this will be considered by it under its reference concerning powers of arrest and detention. Instructions to draft legislation based on these recommendations are to be issued shortly.

43. The Commission completed its inquiry into the offence of "loitering" contained in section 160(1) of the Crimes Ordinance, which makes it an offence for a person to loiter in a public place and fail to give a satisfactory account of himself/herself and satisfactory explanation for his/her presence there. The Commission concluded that the loitering law was wrong in principle, was capable of abuse and that there were adequate existing powers to deal with the problem of persons behaving suspiciously in public places. The recommendations of the commission have been noted by the Administration, which prefers to await the report of the Commission on powers of arrest before considering this report further.

Court cases

44. In the period 1989-1990, there have been 43 cases in which individuals challenged the lawfulness of their detention by way of applications for habeas corpus or judicial review. Of these, the applicants have been successful in 9 cases and unsuccessful in 23 and 11 cases remain outstanding. The following paragraphs briefly describe a number of cases in which the detainees successfully challenged the legality of their detention.

45. In Liew Kar-seng (1989) 1 HKLR 607, the High Court granted habeas corpus to a person who was detained "pending his removal" to Malaysia, where, it was believed, he would be accepted. This assumption proved not to be the case and the Court held that, from the time when there was no real prospect of the authorities being able to deport him within a reasonable time, the detention was no longer "pending removal" and was therefore unlawful.

46. In Lam Yuk-kuen and Chim Lai-yui (1990) 2 HKLR 38, the High Court granted writs of habeas corpus to a woman and her two-year-old daughter who had entered Hong Kong illegally from China. The applicants had been detained pursuant to the Immigration Ordinance, purportedly for the purpose of giving evidence at the trial

of the person who had arranged their passage to Hong Kong. An application for extension of the detention was granted by the District Court without notice being given to the detainees. On the habeas corpus application, the High Court concluded that the failure to give notice rendered the further detention unlawful.

47. In Sakchai Suwannapeng (1990) 2 HKLR 231, the High Court granted a writ of habeas corpus to a person who, while on remand pending extradition proceedings, had been segregated from other prisoners. The Court held that the Prison Rules did not authorize the placing of a prisoner in solitary confinement. As a result of the case, the Administration intends to introduce a new rule, which will explicitly authorize the segregation of prisoners in circumstances where the Superintendent considers it necessary for the maintenance of prison discipline. The necessary legislative amendments are now being drafted.

Vietnamese asylum seekers (see paras. 43 and 44 TPR)

48. Since 1975, some 185,000 Vietnamese asylum seekers have arrived in Hong Kong, of whom 129,000 have so far been recognized as refugees and have been resettled in other countries. Since the introduction of the refugee status determination process in June 1988, 52,000 Vietnamese asylum seekers have arrived in Hong Kong. There are currently 52,000 Vietnamese in the camps, about 8,000 of whom have been given refugee status and permission to remain in Hong Kong pending resettlement overseas. Some 15,000 have been determined not to be refugees and have therefore been refused permission to remain, pending repatriation. A further 29,000 are waiting to have their status determined.

49. All Vietnamese arriving in Hong Kong directly from Viet Nam after 16 June 1988 are screened to determine whether they have a genuine claim to refugee status. Although the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol have not been applied to Hong Kong, the status determination procedures were designed, in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR), to apply the criteria contained in these instruments. All new arrivals are briefed on the status determination process in Hong Kong. UNHCR assumes the responsibility for providing direct advice and assistance to asylum seekers at all stages of the status determination and review procedures. Vietnamese asylum seekers are interviewed by immigration officials using a questionnaire designed in agreement with UNHCR. A person is informed in writing of the outcome of his application for refugee status and at the same time he is advised of his right to apply for a review of an adverse decision. An independent Refugee Status Review Board headed by a former judge reviews the facts of the case and the Immigration Department's decision. Should one member of the Board find in favour of the applicant, the Director of Immigration's decision is reversed. By the end of February 1991, the Board had reviewed about 16,500 cases and reversed the decisions of the Director of Immigration in about 1,500.

50. The present status determination procedures have been refined and developed in the light of experience. Since the introduction of status determination procedures in June 1988, a number of changes have been made, in consultation with UNHCR, to streamline and improve the procedures. Considerable resources are devoted to the status determination and appeals procedures by the Hong Kong Administration. If, on completion of the procedures, UNHCR is of the opinion that a person is a

refugee, even if he or she has been screened out as a non-refugee, UNHCR may declare that person to be a refugee under its mandate and the Hong Kong Administration will then treat that person as a refugee. Out of 21,000 people so far determined by the Immigration Department and Review Board not to be refugees, UNHCR has extended its mandate to some 350.

51. It is current practice that those who are recognized as refugees (pending resettlement) are housed in open centres where there is no restriction on their movements. However, those who are waiting for their refugee status to be determined and those who have been determined not to be refugees are held in detention centres and are not in normal circumstances free to leave the centres. The policy to detain in these circumstances was introduced in 1988 to enable Hong Kong to cope with the major influx of undocumented Vietnamese asylum seekers it then faced. As a very small and very densely populated Territory, Hong Kong could not otherwise have handled with due regard to public order the arrival in large and unpredictable numbers of over 50,000 asylum seekers from Viet Nam over the next two years. A further consideration was that for Hong Kong to have relaxed its policy on detaining asylum seekers would have sent an undesirable and misleading message to those in Viet Nam who might be contemplating clandestine departure for Hong Kong. Hong Kong's difficulties were exacerbated by the huge number of arrivals in 1989, which at times reached a level of 1,000 arrivals per day. A number of temporary camps had to be set up as existing camps became overcrowded and many of the services and facilities provided were unable to operate at the levels that the Government would have wished. The living conditions in the detention centres have steadily improved as new purpose-built accommodation has become available. A new detention centre at Tai A Chau was completed in February 1991. This should help to relieve overcrowding elsewhere, and provide scope for more services and facilities and greater participation of asylum seekers in the management of their centre. Because this new centre is situated well away from the main urban areas, and thus any potential risk to public order is minimized, the Hong Kong Administration is experimenting with a new management approach for this centre. It will be managed by a non-governmental organization (NGO).

52. International and national NGOs have visited refugee camps and detention centres in Hong Kong on many occasions in the past few years. They have included Amnesty International, the Lawyers Committee for Human Rights, the Women's Commission on Refugees and the Indo-China Resource Centre, all of whom have prepared reports on various aspects of the policy and practice relating to the treatment of Vietnamese migrants in Hong Kong. These reports have contained criticisms of current law and practice. The Government has studied the reports carefully and has responded to the concerns expressed where it considered that the criticisms were well-founded and where it considered that there was a reasonable practical response to be made. For example, improvements have been made both to camp conditions and to status determination procedures.

53. At the conference on Indochinese refugees hosted by UNHCR at Geneva in June 1989, all the main resettlement countries and those of the Association of South-East Asian Nations (ASEAN) countries, as well as the United Kingdom and Hong Kong, agreed to the Comprehensive Plan of Action, which provides for the implementation of a fair and just refugee determination process. Detention of migrants pending status determination and of illegal immigrants pending

repatriation is consistent with the measures introduced by ASEAN countries faced with the same problem. A commitment to the Plan remains the cornerstone of the policies of the British and Hong Kong Governments in handling the problem of Vietnamese asylum seekers.

54. In addition to the legal advice provided by UNHCR in the status determination process, all Vietnamese asylum seekers have access to the Hong Kong legal system. Members of the private legal profession have been permitted access to detention centres in order to provide legal advice to those who wish to appeal to the Refugee Status Review Board against an initial unfavourable screening decision, or to challenge the lawfulness of their detention in proceedings before the courts. Since late 1990 volunteer lawyers of the Jesuit Refugee Service as well as lawyers of UNHCR have been providing Vietnamese asylum seekers with legal advice before they attend their status determination interview. Vietnamese asylum seekers are eligible for legal aid to bring proceedings in the courts of Hong Kong and officers of the Legal Aid Department have been given access to the centres to assist clients for this purpose.

55. In recent months, a number of cases have come before the courts in which Vietnamese asylum seekers have challenged the lawfulness of their detention or decisions refusing them permission to remain in Hong Kong as refugees.

56. One case in which the lawfulness of detention of asylum seekers was challenged (Pham Van Ngo and 110 Others (1990) HCMP 3581/90) attracted international attention. Having arrived in Hong Kong with the intention of proceeding to Japan, they were offered assistance with repairs to their boat. That offer was withdrawn and the boat destroyed when upon examination it appeared that the boat could not be made seaworthy. The High Court held that in the circumstances the 111 had not been detained lawfully under the Immigration Ordinance and expressed the view that the detention contravened article 9(1) of the Covenant. The 111 were detained after delivery of judgement, initially for examination and then as unlawful entrants, and were released on token bail within 24 hours. They have since been permitted to remain in Hong Kong as refugees pending overseas resettlement.

57. In the case of R v. Director of Immigration and Refugee Status Review Board ex parte Do Giau and others (1990) 1990MP No. 636, the hearing of applications for judicial review of decisions refusing nine asylum seekers permission to remain in Hong Kong as refugees began on 19 November 1990. On 18 February 1991, the High Court gave judgement in respect of the first applicant, quashing the decisions of both the immigration officer and the Refugee Status Review Board and remitting the case for reconsideration. Although the applicant sought a declaration of his status as a refugee in Hong Kong, the judge made no finding in this respect. The applicant also applied for a declaration that his detention was unlawful which was rejected. The Court held that the immigration officer made his decision in breach of natural justice, in that a material error of fact, which was central to the Immigration Officer's decision, was misrecorded in the record of interview. This error was not corrected on review by the Board. The Hong Kong Government is considering whether or not to recommence the status determination procedure in this case. The hearing of the remaining eight cases continues.

58. The Hong Kong Administration has spent some $HK 3.5 billion ($US 450 million) on the overall care of Vietnamese migrants between 1979/80 and 1990/91. UNHCR has since September 1988 agreed to reimburse the Administration for expenditure directly related to care and maintenance, amounting thus far to $HK 456 million ($US 58.5 million). As of January 1991, UNHCR owes the Hong Kong Administration $HK 238 million ($US 30.5 million). The cost of the refugee status determination process to the Government is estimated at $HK 75 million ($US 9.6 million) in 1990/91, and over 2,000 government employees are deployed daily on tasks related to the care of asylum seekers.

59. Between the introduction of a voluntary repatriation scheme in March 1989 and 28 February 1991, a total of 6,880 volunteers have returned to Viet Nam under the scheme. Following an agreement reached in February 1990 between the British and Vietnamese Governments on the return to Viet Nam of up to 1,000 volunteers a month as from May 1990, there was a gradual increase in the number of volunteers returning home to Viet Nam. The numbers, however, have consistently fallen well short of the 1,000 target agreed in February and are currently averaging about 400 per month.

60. In September 1990, following discussions at Hanoi, an agreement was reached between the United Kingdom, Hong Kong and Vietnamese Governments, and UNHCR, both on streamlined procedures to accelerate the voluntary repatriation programme and on the implementation of a programme to repatriate non-refugees, who, while not actively volunteering to return to Viet Nam, were nevertheless not opposed to repatriation. This new programme was, like the voluntary repatriation scheme, to be administered by UNHCR. The first flight under the new programme under which 23 people returned took place on 1 December 1990. These returnees, like those returning under the voluntary scheme, are given reintegration assistance, and UNHCR monitoring activities in Viet Nam ensure that no non-refugee returned suffers any ill-treatment or persecution.

61. A group of 51 non-refugees, who had not volunteered to return, were repatriated to Viet Nam on 12 December 1989. Under an agreement between the United Kingdom, Hong Kong and Vietnamese Governments, the group were given reintegration assistance and guarantees as to their future treatment after return. The group was visited by two members of the British Parliament in early 1990. They prepared a report on this mission in which they concluded that all 51 returnees had been properly treated by the Vietnamese authorities. The treatment of the returnees has since been monitored by the British Embassy in Hanoi.

Article 13

62. In the case of re Sit Woo-tung (1990) 2 HKLR 110, a seven-year-old boy, born and raised in Hong Kong, of an illegal immigrant mother and resident father, was ordered by the Director of Immigration to be returned to China on the ground that he did not have a right of abode in Hong Kong as the parents were considered not to have entered a bona fide marriage. The removal order against him was successfully challenged in the High Court, where it was held that he was a permanent resident in the Territory and had not practised any deception on the authorities. His mother is currently awaiting removal and the Crown is appealing against the decision.

Article 14

Paragraph 3

63. At present any person who is charged with a criminal offence before the District Court or High Court is entitled to legal aid either free or upon payment of a contribution towards his/her own costs and in the Magistrates Courts may be provided with free representation if he/she is charged with one of nine specified offences or is a juvenile appearing in a Juvenile Court.

Article 17

64. There have been a number of developments in Hong Kong with respect to this article in the Covenant, both in the areas of data protection and laws relating to privacy, both public and private.

65. Regarding data protection, the Law Reform Commission is examining the law relating to information privacy, including the relationship with the media in Hong Kong. At the same time there is a Government Working Group reviewing issues on data protection.

66. With regard to personal information and disclosure in the public and private sector, the Law Reform Commission intends to finalize a data protection model and envisage the release by autumn 1991 of a consultation document for public comment. In this connection, consideration is being given by the Commission to development of codes of practice by key sectors of datahandlers and these should be given the force of law, allowing civil redress and criminal sanctions.

67. Under its terms of reference for a review of the law relating to privacy the Law Reform Commission was requested to examine existing Hong Kong law relating to privacy and to report on whether legislative or other measures are required to provide protection against, and to provide remedies in respect of undue interference with the privacy of the individual, with particular reference to the following matters:

(a) The acquisition, collection, recording and storage of information and opinions pertaining to individuals by any persons or bodies, including government departments, public persons or corporations;

(b) The disclosure or communication of the information or opinions referred to in subparagraph (a) above to any person or body, including any government department, public body, person or corporation in or out of Hong Kong;

(c) Intrusion (by electronic or other means) into private premises;

(d) The interception of communications, whether oral or recorded.

68. However, matters that fall within the terms of reference of the Commission's study on arrest and detention or breach of confidence are excluded from this inquiry, as they are already under consideration by the Commission.

69. In its 1983 report on the law relating to homosexuality, the Law Reform Commission recommended that "the law should not impose a particular view of morality or interfere with the private lives of its citizens". The Commission recommended that the law should not criminalize sexual conduct in private by consenting adults, i.e, adult males who have reached the age of 21 years. In July 1990, a majority of the Legislative Council voted in favour of decriminalizing private homosexual acts (the vote being 31 for decriminalization, 13 against, with 6 abstentions). Amending legislation, incorporating the recommendations of the Law Reform Commission, will be introduced into the Legislative Council as soon as possible.

Article 19

70. In a particular case in 1990, several persons were prosecuted under section 4 (29) of the Summary Offences Ordinance, which makes it an offence punishable by a fine or imprisonment to use a megaphone or any other sound amplification device in a public place without first having obtained the permission of the Commissioner of Police. Their appeals against conviction were allowed. The prosecutions attracted considerable interest in Hong Kong and overseas. The Hong Kong Administration is reviewing this law to see whether there is any unnecessary duplication between it and provisions in the Public Order Ordinance (which deals with the use of sound amplication devices at meetings and processions authorized by the Commissioner of Police) and the Noise Control Ordinance (which deals with the use of sound amplification devices in public places which are a source of annoyance to members of the public).

71. Section 84(1)(m) of the Education Ordinance gave power to the Governor-in-Council to make regulations prohibiting political activities in schools. This has now been repealed and substituted by a new section that gives the Governor-in-Council power to make regulations providing for the control of the dissemination of information in schools, which is of a clearly biased political nature.

72. The powers in Education Regulations 96 and 98, giving the Director of Education powers of control over political activity in schools have also been repealed. A new provision in Education Regulation 98 enables the Director of Education to give guidance in writing to schools to prevent the dissemination of information of a clearly biased political nature. The intention is to encourage the proper teaching of civic education in schools.

73. Education Regulation 92 has also been amended so as to remove from schools the duty to submit syllabuses and textbook lists for the approval of the Director of Education. The Director retains the power to request information regarding a school's syllabus and textbooks, and to give directions in writing requiring a syllabus to be amended or forbidding use of a textbook. These powers will be exercised on educational grounds only.

74. Section 2 of the Official Secrets Act 1911 has been repealed in the United Kingdom by the Official Secrets Act 1989 (see CCPR/C/58/Add.6, part III.F, paras. 256 and 257). The Official Secrets Act 1989 was not applied to Hong Kong and section 2 of the 1911 Act remains in force in the territory. The Secretary for Security told the Legislative Council in November 1990 that the Hong Kong Government is considering whether the 1989 Act should be applied to Hong Kong.

Article 21

75. A detailed explanation was provided in the third report (see CCPR/C/58/Add.6, part III.F, paras. 61-76) as to the discretionary powers of the Commissioner of Police, and how they are exercised within the framework of the Public Order Ordinance.

76. The following updates the figures in the third report (see CCPR/C/58/Add.6, part III.F, para. 68), which indicate the manner in which the Commissioner of Police has exercised his discretion to prohibit a public meeting or to refuse to license a procession.

	1984	1985	1986	1987	1988	1989	1990
No. of public notified meetings	38	108	82	92	176	207	365
Disallowed under section 9	1	2	1	3	3	2	4
Public processions licences sought	31	83	169	172	199	290	272
Licences refused	4	1	4	2	5	3	4

Article 23

77. Section 18 of the Marriage Ordinance has been amended. The age at which a male or female can marry is 16 years. Parental consent is required if the person intending to marry is under 21 years of age. Until the enactment of the Age of Majority (Related Provisions) Ordinance in 1990, a person under the age of 21 years who had been refused consent to marry by a parent or guardian could not marry. The Marriage Ordinance as amended now provides that, where consent has been withheld by a parent or guardian, the person affected can ask a District Court Judge to consent to the marriage and his consent shall have the same effect as if it had been by the person whose consent is refused.

Article 24

78. The Law Reform Commission is currently examining questions of illegitimacy with a view to improving the situation of illegitimate children, particularly related to the right of succession.

79. The terms of reference consist of a consideration of the law relating to legitimation and illegitimate persons, having particular regard to the provisions of the International Covenant on Civil and Political Rights, and to recommend such changes in the law as may be thought necessary.

80. The Law Reform Commission is also considering issues of guardianship and custody, by examining the provisions of the Guardianship of Minors Ordinance, chapter 13, and to recommend such changes as may be appropriate.

81. In January 1990, a Working Party was set up by the Hong Kong Administration to conduct a review of social welfare services and to draft a White Paper setting out the future direction of social welfare development in Hong Kong. The White Paper was published in September 1990 for public consultation. The Administration is considering the responses.

82. In response to an increased need for day care facilities for young children who cannot be cared for by their parents during the day, the White Paper proposes to further expand day care places, to adopt more flexible approach to the provision of the service through the introduction of more flexible hours, occasional child care and the encouragement of more work-based centres and to improve financial assistance to those families who are in social need.

83. The White Paper suggests that future development of residential child care providing supervision and care for vulnerable children and young persons who cannot be adequately looked after by their families should give preference to non-institutional care in the form of foster homes and small group homes which is better than institutional care. In addition, the White Paper also proposes to give families on Public Assistance a Child Supplement, in addition to the child's existing entitlements as a family member, to help towards the extra costs of the food and recreation which every child needs for healthy development.

84. In recent years, there has been an increase in reported incidents of children left unattended, neglected or abused. Increased publicity and public education have attempted to identify and prevent these problems. Statutory provisions for handling child abuse are being amended to accord greater protection to children. In addition, legislative measures to prohibit unsuitable persons from serving as childminders or children being left unattended are under consideration.

Article 25

85. A review of the decisions of the 1988 White Paper on the development of representative government was concluded in March 1990. The Hong Kong Administration recognized the widely held view in the community that there should be a faster rate of political development in 1991 than previously envisaged and, in particular, that the number of directly elected seats in the Legislative Council should be increased.

86. On 21 March 1990 the Chief Secretary announced in the Legislative Council that the number of directly elected seats of the Legislative Council in 1991 would be 18 (almost double the 10 seats which had been previously envisaged) and the number of elected seats from functional constituencies comprising the major social, economic and professional groups in Hong Kong would also be increased to 21 from 14. The number of appointed members and official members would be reduced respectively from 20 to 18 and from 10 to the 3 ex officio members, viz the Chief Secretary, Financial Secretary and Attorney General. In October 1991 the 60-member Legislative Council will for the first time have a majority of members who have been elected at direct elections or by the functional constituencies.

87. People in Hong Kong are encouraged to take part in the conduct of public affairs, to vote and to be elected at elections. In order to maintain the political neutrality of the civil service, and to ensure that government business is, and is seen to be, conducted impartially, some restrictions have been imposed on the political activities of civil servants.

88. These restrictions do not (save only in the cases of members of disciplined services) affect the right of individual employees to join a political organization. The current restrictions do, however, limit the nature and the degree of participation by some civil servants in a political organization. The civil servants who are affected are mainly involved in the formulation of government policy. For the same reason, civil servants are disqualified from seeking candidature and election to District Boards, the Municipal Councils and the Legislative Council.

Article 26

89. The Hong Kong Administration is reviewing all its legislation to ensure that it complies with this article. In this context the following should be noted:

(a) The application of the Convention on the Elimination of All Forms of Discrimination against Women to Hong Kong is still under consideration.

(b) A bill, passed by the Legislative Council in July 1989, which, inter alia, altered the basis of taxing salaries of married couples from aggregation to separate taxation, came into operation on 1 April 1990 (as referred to in CCPR/C/58/Add.6, part III.F, para. 27).